LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 26 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1963.

No. 418.

HARRY G. SEABOLDT,
Respondent,

v.

PENNSYLVANIA RAILROAD COMPANY,
Respondent,

v.

THOMPSON MAHOGANY COMPANY,
Petitioner.

THE PENNSYLVANIA RAILROAD COMPANY'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

F. Hastings Griffin, Jr.,
Dechert, Price & Rhoads,
1600 Three Penn Center Plaza,
Philadelphia 2, Pennsylvania,
Counsel for Respondent Railroad.

International, 711 So. 50th St., Phila. 43, Pa.

IN THE

Supreme Court of the United States.

No. 418

OCTOBER TERM, 1963.

HARRY G. SEABOLDT,

Respondent,

v.

PENNSYLVANIA RAILROAD COMPANY,

Respondent,

v.

THOMPSON MAHOGANY COMPANY,

Petitioner.

THE PENNSYLVANIA RAILROAD COMPANY'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

QUESTIONS PRESENTED.

1. Should this Court review a decision of a Court of Appeals construing a business contract governed by state law?

2. Where in a contract with a railroad an industry has promised to maintain a gate and to indemnify the railroad for any industry omission, and where the railroad is held liable to one of its employees who is hurt because the industry failed to maintain the gate, must the industry indemnify the railroad?

STATEMENT OF THE CASE.

Petitioner's statement contains both omissions and inaccuracies. The most glaring omissions are the failure to define the indemnity issue and to state the procedure by which it was adjudicated.

When this case was first tried the parties waived jury trial on the railroad's claim for indemnity based on the contract between the railroad and the industry. In the contract the industry promised to maintain the gate on which the Railroad's employee, Seaboldt, hurt himself (16),[1] and the industry also promised "to indemnify and hold harmless the Railroad company for loss, damage or injury from any act or omission of the Industry . . ." (16). When the trial judge heard the contract claim non jury, he found that the sole reason the railroad was held liable to Seaboldt in the jury case was because of the Railroad's failure to provide Seaboldt a safe place to work—another way of saying that the sole cause of the accident was the defective gate (301a, see also Petition, p. 3). The Court of Appeals, facing the indemnity issue as "solely a question of contractual liability" (18), held that the industry's failure to maintain the gate was an "omission" on its part and required it to pay indemnity.

The final sentence on page 3 of the petition has nothing to do with the question petitioner presents. Petitioner concedes that the issue it wants reviewed is the "plain meaning of the contract" (10). There is, therefore, no reason for it to have recited evidence in the *negligence* trial. In that action the contract itself and its plain meaning were, by agreement, specifically *excluded* from the jury's consideration. However, if the Court thinks that it is important to know how the jury reasoned to its end result in the jury

1. In this brief, page references without a letter refer to the petition for certiorari and its appendix, i.e. (16). References with the letter "a" refer to the printed appendix used in the Court of Appeals (first appeal), i.e. (16a).

case, the petitioner's statement does not provide the answer. It is inaccurate and misleading. To say, as petitioner has, that the jury's verdict for the industry "rested" on certain evidence is, we suppose, a disguised way of saying that the jury accepted the evidence as true.[2] The record does not show that the jury did any such thing. The question of the industry's negligence was submitted under Pennsylvania law. The trial judge charged that the industry would not be liable to Seaboldt, a business invitee, if the industry had "reason to believe that [plaintiff would] discover the condition" of the gate (261a). Following that charge the members of the jury could have disbelieved every bit of evidence petitioner spells out and still have returned the verdict they did.[3]

---

2. Plaintiff's evidence was inconsistent with much of the evidence petitioner labels "undisputed". In this sense there was a hot dispute. The jury found for plaintiff. Hence much of petitioner's "undisputed" evidence was not true.

3. For instance, petitioner says the jury's verdict "rested" on evidence that the industry's employees never observed the condition of the gate (3). There was a lot of evidence to show that the sagging condition of the gate was obvious (11a, 12a-13a, 15a, 16a, 37a, 38a) and that industry employees saw the gate (226a, 231a, 232a, 234a). Thus, the jury could well have disbelieved the industry's evidence that the condition of the gate was not observed (and we think the verdict establishing that the gate was defective shows that the jurors must have disbelieved the industry's evidence on this point). The jurors could also have believed that the defect in the gate was an obvious one, obvious even to the plaintiff. The charge required a verdict that the industry was not negligent vis a vis the plaintiff if the defect was obvious.

REASONS WRIT SHOULD BE DENIED.

1. The problem is one of state not of federal law.

2. The problem how to interpret a contract between two businesses raises no question of public importance.

3. There is no conflict in the holdings of the various Courts of Appeals.

4. A conflict is expected where the Courts of Appeals are applying the laws of different states.

5. The Third Circuit's interpretation of the contract was sound.

AMPLIFICATION OF FOREGOING REASONS.

a. There Is No Federal Question.

Reasons 1, 2 and 4 hardly need amplification. Petitioner concedes that interpretation of the siding agreement is governed by state contract principles (5). *Baltimore & Ohio R. Co. v. Alpha Portland Cement Co.*, 218 F. 2d 207, 211 (3rd Cir. 1955). It would undoubtedly be a very nice thing if contracts were interpreted uniformly in every state of the union. But they are not.[4] "The meaning of words in a contract is nearly always the subject of much argument". (17). When tort concepts of "negligence" become enmeshed in the problem of contract interpretation,[4] there is further argument and resulting conflict. What may be "negligence" in Oregon may not be "negligence" in Pennsylvania. In the present case, for instance, the industry's failure to correct a sagging gate for six months was not liability-producing conduct under Pennsylvania tort law, and hence the industry was not "negligent" toward the man who was hurt when he tried to open the gate. Under Oregon law identical

4. Certainly it is preferable to avoid mixing tort and contract concepts. *Infra* p. 7. However, petitioner's argument that Judge Goodrich's decision was wrong is bottomed on the proposition that this contract and state negligence law are inextricably intertwined.

conduct might well be "negligence" of a high degree. Conflicts in the laws of the various states are inevitable. Conflicts in the decisions of federal courts applying state laws are just as inevitable. In short, granting for the sake of argument that petitioner correctly points to state-law "conflict" between the 9th, 10th and 3rd Circuits (Petition 5-10), the obvious question is, "Why should the Supreme Court be concerned about that?". Petitioner's answer, that resolution of the conflict is of "paramount importance to a uniform understanding of the meaning of similar agreements" (10), is hardly an answer since our federal system does not require the states to have such a uniform understanding.

b. Petitioner Seeks Review of a Conflict in Dicta.

There is no conflict between the holding of this case and the holdings of the other cases petitioner cites. All the cases apply the fundamental law that contracts are to be interpreted to give effect to the intention of the parties. Differences in results stem from differences in the underlying facts.[5] No two of the cases decide "the same matter".

5. This case is the only one of all the cases cited where the court specifically deals with (a) a promise to maintain; (b) a violation of the promise, (c) an accident due solely to the violation, and (d) an agreement to indemnify. Petitioner ignores (a), (b), and (c), He wants an interpretation of (d) that sounds the same as some other decisions interpreting agreements like (d) where (a) and (b) were non-existent and the facts of the accident, i.e. (c), entirely different. Compare *Anthony, et al. v. Louisiana & Arkansas Railway Co.*, 316 F. 2d 858 (8th Cir. 1963); where there was both (1) a covenant and (2) an indemnity agreement similar to the one here. In *Anthony*, applying Arkansas law, the Eighth Circuit gave indemnity. The issue of interpretation was different from the issue in this case, not only because the courts were applying local law but also because the covenant was different. However, *Anthony* reaches the same end result as *Seaboldt*, i.e., full indemnity. We presume, therefore, that petitioner would say that *Anthony* conflicts with the cases cited in the petition. A petition for certiorari has been filed in *Anthony*, October Term, No. 309. As we understand it the petitioner there has not asserted a conflict among the Circuits. It claims merely that the Eighth Circuit misapplied Arkansas law.

Your Rule, 19(1)(b). Judge Goodrich said that the other cases could not help the Third Circuit decide this one, since "none of the cases construing language like that before us has faced the issue presented to us, and we approach the language for our purposes as though it had not been construed before" (17). The conflict petitioner finds is not a conflict in substance but a conflict in dicta (8-9, 17, footnote 3).

c. The Decision of the Court of Appeals Is Sound.

Judges Goodrich, Hastie and McLaughlin were right in interpreting this contract as they did (18):

> "It is to be pointed out that we are not now dealing with passive or active negligence nor any question of indemnity or contribution between tortfeasors. This is solely a question of contractual liability assumed by Thompson when Thompson and the Railroad made their contract at the time of the installation of this siding."

Petitioner does not like that approach. Its aim is to reactivate the thinking of a group of cases that muddled tort and contract concepts. Apparently this Court does not approve of such an aim.

> ". . . in the area of contractual indemnity, an application of the theories of 'active' or 'passive' as well as 'primary' or 'secondary' negligence is inappropriate." *Weyerhaeuser S. S. Co. v. Nacirema Co.*, 355 U. S. 563, 569 (1958).

Judge Goodrich's straight-forward handling of the problem was sensible and correct (18):

> "We think the contract is broad enough to make Thompson liable for the consequences of this accident. . . . We rely upon the language which Thompson agreed to in entering into this contract. It promised

to maintain the siding. It also promised to hold the Railroad harmless for damage from any act or omission. If this gate was in a state of disrepair, that disrepair is certainly due to an omission on Thompson's part to "maintain" all the appurtenances. We think this is the agreement Thompson made. It does not rest upon any tort liability of either party but simply, as a matter of contract, creates the obligation on Thompson as above indicated."

CONCLUSION.

There are no "special and important reasons" for granting the petition. Rule 19(1). The Court of Appeals, which had this question of contract interpretation argued to it three times,[6] correctly interpreted the contract. But quite apart from that, the problem itself is a local one governed by state law. It is neither necessary nor fitting that this Court concern itself with it.

Respectfully submitted,

F. Hastings Griffin, Jr.,
Dechert, Price & Rhoads,
Counsel for Respondent Railroad.

---

6. The case was tried, appealed and decided, Judge Goodrich writing the opinion petitioner now attacks. The industry petitioned for reargument which the Court of Appeals denied. The case was then retried in accordance with Judge Goodrich's opinion, and the Railroad satisfied Seaboldt's judgment. A judgment for indemnity was entered against the industry, and the industry again appealed. The Court of Appeals affirmed.